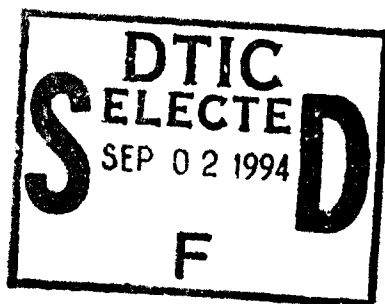


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**NAVAL POSTGRADUATE SCHOOL**  
**Monterey, California**

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**THESIS**

**THE SPRATLY ISLANDS: A BREWING  
FLASHPOINT IN ASIA**

by

**Adolf Borje**

**June, 1994**

Thesis Advisor:  
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**The Spratly Islands: A Brewing Flashpoint In Asia**  
by

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Submitted in partial fulfillment  
of the requirements for the degree of

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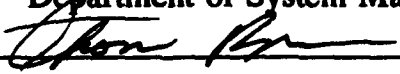
  
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## ABSTRACT

The Spratly Islands located at the heart of South China Sea is developing to be a flashpoint in the region. Geological survey conducted underneath the seabed of these islands following the oil crisis in the 1970s shows an enormous potential of oil and gas reserves notwithstanding the existence of rich marine resources. Moreover, with the adoption of the new international Law of the Sea concept there are overlapping claims by contending countries. Unless these claimant countries namely, China, Vietnam, Taiwan, Malaysia, Brunei and the Philippines, reconcile their differences and come to terms the conflict is bound to escalate.

This thesis is an in depth study of the disputes over the Spratlys and examines four cases of islands based territorial disputes that could be used as a model in resolving these tensions. Although there is an apparent build up of military capabilities by claimant countries in recent years, this thesis argues that a military option will only create division and strain longstanding animosities. Instead, a peaceful solution is recommended through a cooperative regime as quickly as possible so that they will realize the full potentials of these islands.

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## I. INTRODUCTION

For several years the issue of who owns the Spratlys, or some part thereof, has been and still is a lingering problem in Asia. Today six Asian countries namely China (Peoples Republic of China), the Philippines, Vietnam (Socialist Republic of Vietnam), Taiwan (Republic of China), Malaysia and Brunei have steadfastly laid claims to some of the Islands comprising the Spratlys either by virtue of longstanding historical antecedents, by mere physical occupation, or as part of their growing territorial boundaries invoking the new international Law of the Sea concept that establishes a 200 mile Exclusive Economic Zone (EEZ). As a result, there are overlapping claims and to some degree these claims caused sporadic military confrontations among the claimant countries, thereby creating tension in this region.

The situation was exacerbated in February 1992 when China promulgated and enforced the Territorial Waters Act, which declares that the Spratly and Paracel Islands, located in the South China Sea form an integral part of her territory. This act passed by the Standing Committee of the National Peoples Congress of China not only affirmed territorial sovereignty, but explicitly reserved the right to use military force in the

area.<sup>1</sup> The rest of the contending countries sharply protested this pronouncement. As far as the threat environment in the South China Sea is concerned, it is bound to grow more complex and volatile. It seems that there is no unanimity among the countries bordering on the South China Sea as to the ownership of these islands. The Spratly Islands thus remains a powder keg with the potential for igniting large-scale open military confrontation.

#### **A. The Response of Asian Countries**

A number of Asian states have responded to the Spratly situation. Malaysia for one has placed her military troops on alert. At the same time, it was very cautious in response to Beijing. Foreign Minister Datuk Abdullah Badawi stated that "Malaysia wanted to avoid a military confrontation in the South China Sea at all cost and would jointly develop only with Vietnam the Islands over which the two have joint claims. Our decision is not intended to involve others or other areas where there are multiple players".<sup>2</sup> The Philippines, on the other hand, indicated that it will remain "vigilant" but wanted to "see to it that the Spratlys do not become a

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<sup>1</sup> "China Testing The Waters", Far Eastern Economic Review, March 12, 1992, p. 9.

<sup>2</sup> *Ibid*, p. 9.



military flashpoint".<sup>3</sup> Taipei protested that these initiatives would threaten both the traditional fishing rights in the South China Sea and the Taiwan Straits, as well as the established free passage rights through regional choke points. Vietnam for her part sent secret protest notes to Peking at both the party and state levels in an attempt not to escalate the dispute. Brunei quietly pushed for the adoption of the New International Law of the Sea concept.

These irritants and confrontations have been minimized largely due to diplomatic initiatives and a growing security concern among other Asian countries, but how long will these issues remain unresolved without undermining the stability of the region? While these conflicts did not escalate in the last decade or so, now that the cold war is over and the large United States military contingent which served as a stabilizing force in Asia, have been finally withdrawn from the Philippines, their departure may spark a scramble for the Spratlys. The pull-out of American military troops may create a power vacuum and the massive military build up, and regular maneuvers on land and in the South China Sea being undertaken by China is an indication that it has moved in to fill this vacuum.

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<sup>3</sup> A. James Gregor, The Spratlys and the Security Environment in the South China Seas, The National Defense University Press, Washington, D.C., p. 219.

Admiral Charles Larson of the United States Navy argues that many of the positive developments that occur in Asia today and elsewhere were born of many factors but founded in the military power of the United States. A stabilizing American presence in Asia is needed, given the historic animosities and social and economic pressures that provide the potential for catastrophe. The U.S. presence and power act as a brake on instability and serve to promote cooperation in that region.<sup>4</sup>

#### **B. Resource Potentials**

Although historical records revealed much earlier the existence of disputes over these islands groups, it was only during the post-World War II era that it became more pronounced.<sup>5</sup> Japan occupied the Islands in 1939 as a forward staging base in the pursuit of its Greater East Asia Co-Prosperity Sphere policy. However, her occupation ended abruptly when Japan surrendered in 1945. Specifically in Article 2 of the 1951 San Francisco Peace Treaty between the Allied Powers and Japan provides that: Japan renounces all rights, titles and claims to the Spratlys and to the Paracel

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<sup>4</sup> Ralph A. Cossa, The New Pacific Security Environment: Challenges and Opportunities, The National Defense University Press, Washington, D.C., 1993, p. 14.

<sup>5</sup> Ji Gouxing, The Spratlys Disputes and Prospect for Settlement, Institute of Strategic and International Studies, Malaysia, 1992, p. 1.

Islands, but the treaty did not state to whom the Islands belonged.<sup>6</sup> This virtually opened a "Pandora's Box" encouraging occupation of the islands by any interested country.

Moreover, the Spratlys' economic potential, particularly the prospects for the development of offshore oil and other marine resources, have reawakened the interest of these countries in pursuing their respective territorial claims.

It was reported in the late 1950s and the early 1960s, that a number of seismic studies and geological surveys suggest that the East China and the South China Seas are potentially rich in recoverable oil deposits. Since 1982, more than three hundred promising geologic structures on the continental shelf of the South China Sea have been identified. The estimates of recoverable oil in this part of the region range from a modest 11 billion barrels of reserves to almost 160 billion barrels.<sup>7</sup> This belief was reinforced when oil explorers hit "black gold" off the coast of North Borneo, in Malaysia, offshore Palawan in the Philippines, and in the Bach Ho oil fields off the coast of Vietnam. That the islands are rich in resource potentials such as oil, natural gas, as well as abundant marine life, raises the possibility of international violence in pursuit of political control.

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<sup>6</sup> Alan J. Day, Border and Territorial Disputes, Gale Research Company, Detroit, Michigan, 1982, p. 330.

<sup>7</sup> A. James Gregor, *Op cit.* p. 225.

### C. Prospects for cooperation

Indonesia, which is not a party to this conflict, called China's territorial claim "unfortunate"<sup>8</sup> and offered to broker an honest solution by hosting two semi-official seminars in 1990-1991 in an effort to achieve a peaceful settlement of the territorial conflict. This was followed by another workshop in July 1992 to seek cooperation among the claimant countries through the conduct of joint maritime exploration and research studies in the disputed territories. Apparently, no country is yet ready for formal talks.<sup>9</sup> Perhaps, with the absence of bipolar rivalry that characterized the end of the cold war, regional, bilateral or maybe a multilateral organization could be explored as an avenue for resolving this conflict.

These initiatives bring hopes for peace in the region. I will consider them, and the lessons learned from other resolved cases of Island territorial disputes such as what happened in the Falklands, Timor, Spitzbergen (Svalbard),<sup>10</sup> and Antarctica in formulating a strategy that will help reduce

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<sup>8</sup> Far Eastern Economic Review, March 12, 1992, *Op cit.* p. 9.

<sup>9</sup> Clayton Jones, "Paradise Islands or an Asian Powder Keg?", The Christian Science Monitor, Dec.1, 1992, P. 19.

<sup>10</sup> Spitzbergen (Svalbard), is an archipelago consisting of several large and many small islands located 400 nautical miles North of the Norwegian mainland. These islands are occupied jointly by Norwegians and Russians who are engaged in coal mining.

this brewing tension in the Spratlys, thus helping promote peace and security in the region. Of course there are military initiatives undertaken by contending countries, hence the impact of these moves will be carefully considered as they greatly affect the resolution of the conflict.

The lessons learned from these cases could provide insights into an alternative model that could somehow lessen the impact of this growing island territorial dispute. The Falkland Islands, for example, could be viewed as a case where contending parties were not able to resolve the conflict peacefully resulting in war between Great Britain and Argentina. On the other hand the Timor case presents a stark contrast in that, despite the absence of a regional council or organization, Indonesia and Australia agreed on a zone of cooperation in the Timor Sea.<sup>11</sup>

Other models that would be used to help resolve the conflict peacefully is the one adopted in the Antarctic and the Spitzbergen. A key feature of the Antarctic Treaty is an agreement among the twelve contesting nations to freeze their territorial claims until the pact was subjected for review in 1991 and also prohibits the use of these lands for the establishment of military bases or fortifications as well as the testing of any type of military weapons or the use of

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<sup>11</sup> Ewan W. Anderson, An Atlas of World Political Flashpoints, Text, Ewan W. Anderson; Maps, Printer Publishers, 1993, p. 193.

these lands for nuclear explosions. In the case of the Spitzbergen Treaty, the United States played a major role in bringing together the historical, economic, geographical and scientific differences of Norway and Russia over the islands. Instead the coal resources of the islands were developed jointly by Norway and Russia while the United States and other signatories to the treaty were granted access rights to the islands.

## II. BASES OF CONTENTION

The contending countries are compelled by various interests in establishing their claims over any part of the Spratly Islands, ranging from purely economic reasons, or enhancing their respective national security interests, to expanding their maritime space.

The Spratly Islands are situated in the South China Sea and comprise approximately 100 islets and coral reefs. This group of Islands is located south of 12 degrees north and east of 111 degrees east, but excludes those islands within 40 nautical miles of the coast of Brunei and Malaysia, and those within the treaty limits of the Philippines. These islands are in a deep ocean basin, rhomboid in shape, located approximately 300 nautical miles west of the island of Palawan in the Philippines, 300 nautical miles East of Vietnam and 650 nautical miles South of Hainan, China.<sup>12</sup> Western navigators have divided the area into Reed Bank, the Spratly Islands and the Dangerous Ground, but the whole area is usually referred to as the Spratly Islands.

Strategically the islands command a choke point at the very heart of the South China Sea which is a major sea line of communication (SLOC) in the region. Ships from Vladivostok, Pusan, Yokohama, Shimonoseki, Tsing Tao, Hong Kong and

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<sup>12</sup> *Ibid*, p. 193.

Singapore pass across the South China Sea. Moreover, the industrialized nations of Northeast Asia that rely heavily on trade and commerce, depend largely on this vital sea lane. The 1987 census indicates that around 45 percent of the total amount of imports to Japan passes from the Persian Gulf through the Strait of Malacca thence to the South China Sea. Obviously any obstruction of the existing free passage through these sea lanes would have a severe impact upon Japan's industrial capacity and economy. The other countries in Asia, as well, would be adversely affected in the event that China attempted to impose restrictions or controls over this major sea line of communication. The South China Sea Islands are considered "very important geographically as a key link" on the shipping lanes that arc from the Middle East to Northeast China.<sup>13</sup> Any tension that may be sparked in the South China Sea could seriously affect the economic progress of the nations that are dependent on this vital sea line of communication.

For purposes of classification the Spratlys comprise twelve regions with islands, reefs and cays as follows:<sup>14</sup>

1. North Danger Islands:

Northeast Cay, about 1 km long and 400 meters wide, is covered with coarse grass and low bushes as well as thickly wooded tress growing about 6 to 9 meters.

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<sup>13</sup> A. James Gregor, *Op cit.* p. 226.

<sup>14</sup> Dieter Heinzig, Disputed Islands in the South China Sea, Otto Harrassowitz, Wiesbaden 1976, pp. 18-19.



Southwest Cay, about .5 km long and 300 meters wide.  
its vegetation is similar to Northeast Cay.

2. Thitu Islands and Reefs.

Thitu Islands, about 1.5 km long and 1 km wide,  
covered with grass, scrub, and palm trees.

Sand Cay, a tiny islet without vegetation.

3. West York Islands, about 500 meters long and 320 meters  
wide, covered with trees.

4. Loaita Island and Reefs.

Loaita island, an island covered with mangrove bushes,  
coconut palms and bushy trees.

Lamkiam Cay, a tiny sand cay.

Loaita Cay.

5. Irving Cay.

6. Nanshan Island, about 580 meters long and 2.5 meters  
high, covered with coarse grass.

Flat Island, white dune about 240 meters long and 90  
meters wide and 2 meters high.

7. Tizard Bank and Reefs.

Itu Aba Island, about 1 km long and 400 meters wide,  
covered with tress and scrub.

Namyit island, about 19 meters high, covered with  
bushes and small tress.

Sand Cay, covered with bushes.

8. Union Bank and Reefs

Sin Cowe Island, about 2.5 meters high.

Sin Cowe Cay.

9. Spratly Island, about 750 meters long and 400 meters  
wide, covered with vegetation.

10. Commodore Reef, about .3 meters high.
11. Mariveles Reef, about 1.5 meters high.
12. Amboyana Cay, about 2 meters high, consisting of beach of sand and broken coral, partly covered with a bed of guano.

#### **A. China Asserts Inviolable Sovereignty**

China anchors its claim over the Spratlys on the basis of historical records. The PRC maintains that as far back as the Han Dynasty (206 B.C. to 220 A.D.), the whole South China Sea was part of China's territory being a part of "Chinese Lake" (Fig 1) and all the islands islets, shoals, cays, banks, and coral reefs within this area are part of Chinese territory.<sup>15</sup>

China contends that the historical evidence contains proof that the Chinese were the very first to discover, exploit, and develop the Spratly Islands. Nevertheless, it was not known how or when the South China Sea and its islands were initially registered as part of the Chinese world. The expression "South China Sea" probably did not enter the Chinese lexicon any earlier than the Han dynasty with the absorption of southern

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<sup>15</sup> Chiu, Hung, "South China Sea Islands: Implications for Delimitating the Seabed and Future Shipping", China Quarterly, 1979, p. 5.

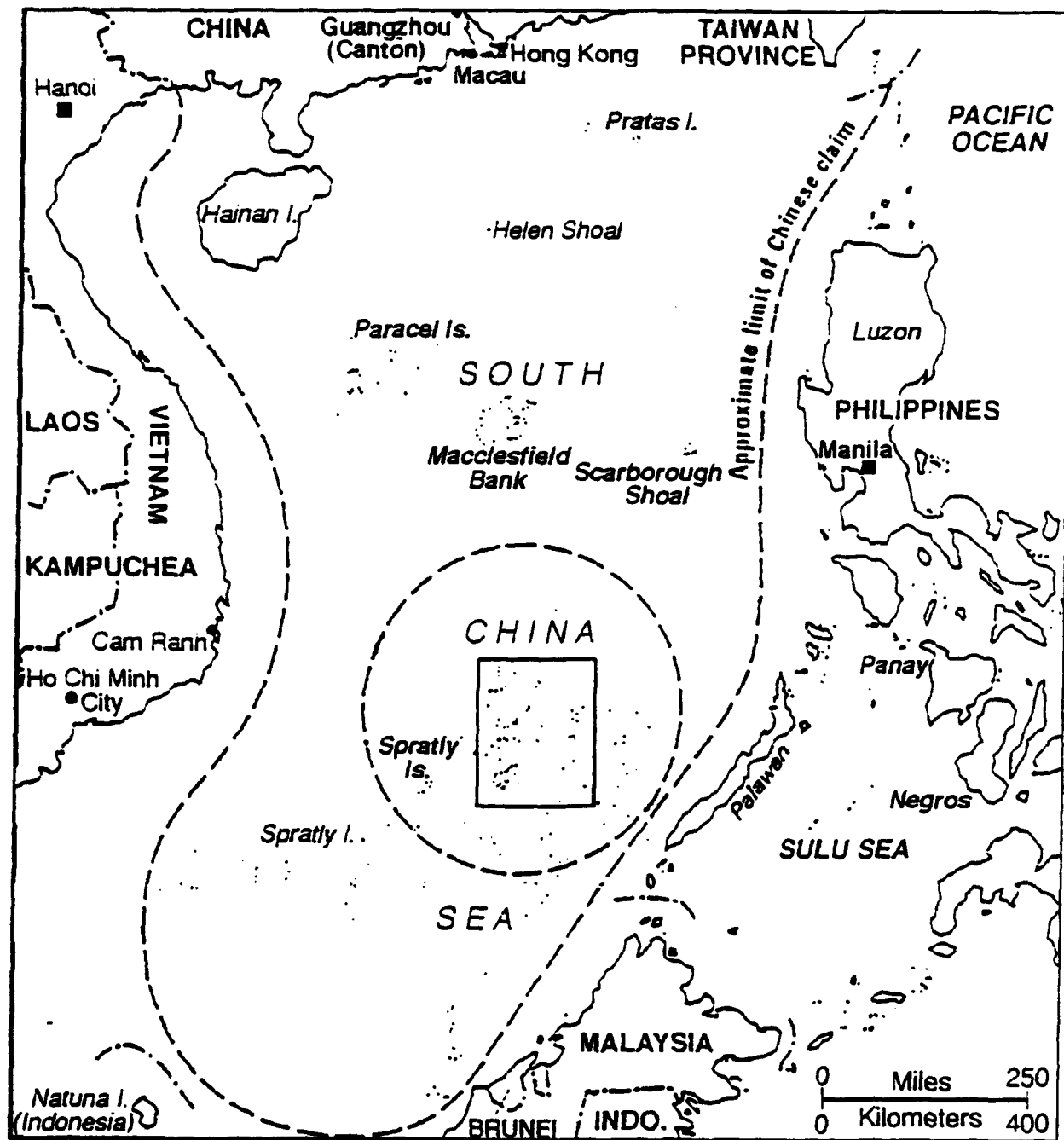


FIGURE 1: China Lake, (Ref. South China Sea, Treacherous Shoals, FEER, 8/13/92 p. 15)

China.<sup>16</sup> During that era, Ma Yuan led a fleet of approximately 2,000 vessels to carry out the conquest of Jih-nan or North Vietnam, which undoubtedly led to expanded contact with the islands of the South China Sea. As a result of this successful military venture, the South China Sea became an area of interest to Chinese historians and geographers, but they made no specific references to its islands and atolls for several centuries.<sup>17</sup>

Notwithstanding these early references to the Spratly Islands, the Chinese apparently did not formally assert sovereignty over the islands until the late nineteenth century. The matter of Chinese sovereignty over the South China Sea islands first arose as an issue in the last quarter of the 19th century purely as a reaction to the increasing domination of the region by France, England and Japan.

Moreover, in August 1951, invoking national security policy and national interest, Zhou Enlai who was then the Foreign Minister of the PRC, asserted the "inviolable sovereignty" of the People's Republic of China over the Spratly Islands and the Paracel archipelago.<sup>18</sup> Since then China has aggressively pursued her interests and to date occupied eight

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<sup>16</sup> Jon M. Dyke & Dale L. Bennett, Islands and the Delimitation of Ocean Space in the South China Sea, The University of Chicago Press, 1993, p. 62.

<sup>17</sup> Jon M. Van Dyke and Dale L. Bennett, *Op cit.* p. 62.

<sup>18</sup> A. James Gregor, *Op cit.* p. 217.

(8) islets, reef and other unnamed cays within the Spratly Island Group. These islands include; Subi Reef, Fiery Cross Reef, Johnson Reef, Cuateron Reef, Gaven Reef, Chu Tap and Chan Vien.

From an economic standpoint, China, just like the rest of the claimant countries, foresees the potential of the recoverable oil that will help boost its industrial development in the next century. Only recently the China National Offshore Oil Corporation (CNOOC) signed a joint exploration contract with Crestone Energy Corporation (Crestone), an American oil company, three months after the promulgation of the China Territorial Waters Act to pursue exploration in a block contiguous to an offshore oil field of Vietnam. The contract stipulates that Crestone will shoulder the cost of three years of exploration but it will share the recovery expenses with CNOOC if no oil is found.<sup>19</sup> However, this move is opposed strongly by Vietnam, saying that the exploration is an infringement on Vietnam's sovereignty.

Moreover, in an effort to assert her claim over the Spratly Islands, China in January 1992 commissioned a large and impressive body of officials to make a circuit of the Spratly archipelago. One hundred and thirty-two State officials from the People's Liberation Army's Navy, the State Oceanic Commission of Hainan province, together with represen-

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<sup>19</sup> "Territorial Disputes Simmers in Areas of South China Seas", Oil & Gas Journal, July 13, 1992, p. 20.

tatives from the Chinese Communist Party, posted claim plaques on some of the major islets, atolls, and sand banks of the Spratly chain of islands.<sup>20</sup>

#### **B. Taiwan Holds Onto China Lake**

The basis of Taiwan's claim over the disputed Spratly Island Group is the contention that Taiwan is the only legitimate government that represents the Chinese people. Hence, Taiwan holds onto the same historical data invoked by PRC, that the South China Sea is a "China Lake", and the territory including the Spratly Island Group is part of her territory.

One additional claim by Taiwan is grounded on the right of occupation by operation of international law based on the events of the early post-World War II days. The Chinese Nationalist government sent troops to occupy the Spratlys and also the Paracels Islands, some fifteen months after the surrender of Japan. However, these naval forces were withdrawn in 1950 in conjunction with the withdrawal of the Nationalists from mainland China to Taiwan. Taiwan now asserts that it has sovereignty over the South China Sea Islands in accordance with the rights of occupation as provided by international law. Hence, in 1962 Taiwan occupied Itu Aba Island permanently. However, Taiwan's occupation of Itu Aba was considered by

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<sup>20</sup> A. James Gregor, *Op cit.* p. 220.

the Philippines as infringement upon their territorial rights when Filipino settlers occupying the island at that time were forcibly ejected. Since that time Taiwan fortified Itu Aba, improving on the buildings left by the Japanese and those constructed by the ejected Filipino settlers.<sup>21</sup>

### C. Vietnam Increases Its Stakes

Vietnam's claim to the Spratlys Islands dates from the late eighteenth century. The Vietnamese refer to the islands as the "Truong Sa" Archipelago. The Vietnamese government claims that both the Spratlys and the Paracels belong to them after it was ceded by the French Government, right after she gained independence from France. On the contrary, France refuted the claim of Vietnam over the Spratlys but acknowledges the transfer of the Paracels to Vietnam. Despite the French position, Vietnam occupied one of the seven Islets on 22 August 1956, and eventually occupied twenty four (24) islands, islets, reefs, cays, and some unnamed shoals.

Since the adoption of the 1982 UN Convention on the Law of the Sea, Vietnam has stepped up its occupation of the Spratlys to get the best gains. It took measures to increase its military strength on the islands and enlisted foreign oil companies to engage in the exploration and exploitation of the Spratly seabed. On November 25, 1982, Vietnam specifically

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<sup>21</sup> Shim Jae Hoon, "Blood Thicker Than Politics", Far Eastern Economic Review, May 5, 1988, p. 26.

declared that its territorial waters included the Spratlys and the Paracels.<sup>22</sup> Thus the occupation of the rest of the 24 islands continued until 1989. The islands presently occupied by Vietnam in the Spratlys include the following: Southwest Cay (Nanzi Dao), Sand Cay (Dungian Shazhou), Namyt (Hongxiu Dao), Sin Cowe (Jinghon Dao), Spratly Island (Nanwei Dao), Amboyana Cay (Anbo Shazhou), Pearson Reef (Liumen Jiao), Eldad Reef (Zhong Jiao), Owen Shoal (Aoyuan Ansha), Rifleman Tank (Nanwei Tan), Barque Canada Reef (Bai Jiao), North Danger Reef (Shuanzi Qunjiao), Bombay Castle (Pengbobao), Prince of Wales Bank (Guanga Tan), Vanguard Bank (Wanan Tan), Discovery Great Reef (Daxian Jiao), Wumie Jiao, Cornwallis South Reef (Nanhua Jiao), Petley Reef (Bolan Jiao), and Nailuo Jiao.<sup>23</sup>

However the occupation of these islands is opposed strongly by the Peoples Republic of China. Moreover, China has stepped up its military presence not only in the Spratly Islands but around the South China Sea to bolster its claim and to contain Hanoi's "inherent expansionist designs" in the Spratly Islands.<sup>24</sup>

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<sup>22</sup> Ji Gouxing, *Op cit* p. 9.

<sup>23</sup> *Ibid*, pp. 9-10.

<sup>24</sup> Jerry Cushing, "Beached Again On Shoals", Far Eastern Economic Review, March 17, 1988, pp. 23-24.



#### **D. Malaysia Establishes A Resort**

Malaysia's entry into the disputed area was accomplished through the occupation of four(4) islets and reefs one of which is Mariveles Reef which is also being contested by the Philippines.

In 1979 Malaysia unilaterally extended its boundary line from the point at 109 degrees 38 minutes east and 6 degrees 18 minutes north, in a line that traverses in an east-northeast direction. The motivation of the Malaysian government for this action was undoubtedly the growing scramble for offshore oil in the South China Sea and the new 200-mile Exclusive Economic Zone (EEZ) concept.

Earlier, Malaysia occupied Commodore Reef, which is also claimed by the Philippines. But after a strong protest by the Philippines, Malaysia finally vacated the Reef.

The three islets occupied by Malaysia are Dallas, Shallow and Louisa Reefs. But the occupation of Louisa Reef is being contested by both Brunei and the Philippines. The Philippines contends that these islets are within "Barangay Kalayaan" a village of the town of Palawan. On the other hand, Brunei claims that Louisa Reef is well inside its territorial limits.

Recent developments occurred on May 1991 when Malaysia announced the development of "Terumba Layang Atoll" (Swallow

Reef) as a tourist resort. This initiative was vehemently opposed by both Vietnam and China.<sup>25</sup>

#### **E. Brunei Joins The Group**

The latest claimant to join the disputed territory of the Spratly Island Group is Brunei. Although nothing was mentioned yet about whether Brunei has occupied any islands, her entry into the dispute was purely motivated by adopting the new international Law of the Sea concept just like the rest of the other claimants.<sup>26</sup> Invoking this new concept, Brunei unilaterally declared a 200-mile EEZ that obviously overlapped the EEZ of Malaysia and the Philippines. Economically, the area being claimed by Brunei has a rich potential for oil exploration and other marine resource hence there is a possibility of border disputes between Malaysia and the Philippines.

#### **F. Philippines Lays Claims On Kalayaan**

The Philippines' claim to eight islands in the Spratlys is anchored on legal grounds that were invoked as soon as the Japanese and the Taiwanese started abandoning the islands in 1950. Believing that the Islands have reverted to open occupancy, or *res nullius* a group of intrepid Filipinos headed by Tomas Cloma sailed to what is now called Freedom Land or

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<sup>25</sup> Ewan W. Anderson, *Op cit.* p. 195.

<sup>26</sup> Mark Valencia, "All-For-Everyone Solution", Far Eastern Economic Review, March 30, 1989, p. 20.

"Kalayaan" in Filipino. Thereafter Cloma lodge formal claims to justify ownership to these islands by several proclamations which includes a Notice to the Whole World in May 15, 1956; an Instrument of Notification, a Charter of the Free Territory of Freedomland and Proclamation, all signed in July 6, 1956. However in December 4, 1974, Cloma executed a Deed of Assignment and Waiver of Rights transferring his claims of Kalayaan in favor of the Philippines government.

Aside from physical occupation and placing these islands under the political jurisdiction of the town of Palawan, the Philippines issued Presidential Decrees 1596 and 1599 to substantiate its claim over these islands in the Spratlys. On June 11, 1978, President Ferdinand E. Marcos signed Presidential Decree (1596), which claimed the Kalayaan group for the Philippines. These islands, he declared, were "unoccupied, unowned and unpossessed islands, which had not even been shown on maps before the Second World War, and the Philippines had therefore occupied them as *res nullius*<sup>27</sup> or no one's territory". The area claimed now extends over an area of 70,150 square nautical miles, covered by another Presidential Decree (1599), issued July 17, 1978, proclaiming the Kalayaan group of islands to be within the EEZ of the Philippines.

Based on these grounds, the Philippines are occupying seven islands namely Thitu (Pagasa), Nanshan Island (Lawak),

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<sup>27</sup> Alan J. Day, *Op cit.* p. 331.

Loaita (Kota), West York Island (Likas), Flat Island (Patag), Loaita Cay (Panata) and North Danger Reef (Parola). The Philippines is contesting two other islands presently occupied by Vietnam namely Namyt (Binago), and Spratly (Lagos) and another island occupied by Taiwan which is Itu Aba.

Thitu is the second biggest island in terms of land area. Five of these islands form a cluster occupying a radius of 50, miles, while Spratly is located 205 nautical miles southwest of the clustered group.

In terms of distance Nansha Island or Lawak is the nearest island occupied by the Philippines. It has an approximate distance of 148 nautical miles from Palawan a town of the Philippines.

From the Philippine security perspective, the Spratly Islands group is of vital interest, as these islands can serve as an advance military outpost or forward operating base in detecting any hostile aggressor that comes from the South China Sea.<sup>28</sup> The control of these islands by any of the contending parties, particularly China or Vietnam, would undermine the security of the Philippines even more if nuclear submarines or nuclear vessels were to be stationed in these islands.

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<sup>28</sup> The Christian Science Monitor, Dec 1, 1992, Op cit. p.19.

## **G. Incentives**

At the core of these claims are the incentives for more territorial space. The initial ratification of the new International Law of the Sea concept in 1982 has further complicated the contention of claimant countries. This new international law concept encouraged developing countries to chart their new 200 nautical miles EEZ that sometimes overlapped the boundaries of other countries. In essence this new International Law of the Sea is a global (United Nations) effort that causes regional problems.

Another important incentive is the prospects for oil and natural gas that lay underneath this ocean floor. To the contesting countries, the expanded jurisdiction offers them the promise of a greatly expanded resource base with regards to minerals, hydrocarbons, and living resources. The United Nations Convention on the Law of the Sea (LOS Convention) adopted in April 1992 after nine years of negotiations recognizes the exclusive rights and jurisdiction of the coastal states over the resources to the coast and extending out to 200 nautical miles (articles 56 & 57). Likewise, the convention recognizes the right of the coastal state in the resources of its continental shelf which may extend up to 350 miles or beyond under certain circumstances (Articles 76 & 77). The immense resource potential, both living and non-living, if properly explored, exploited, conserved, and developed, could certainly alleviate some of the economic

problems as well as the growing energy needs affecting some of the contending countries and perhaps raise the living standards of their people.

In large measure, the principal interest of the contending parties in the Spratlys has been in security and strategic matters. Recent developments indicate that most claimant countries are gearing up to enhance their defenses for their respective claims. Somehow a resolution of this case should be pursued to avert any war. The Timor Gap case can serve as a model where Australia and Indonesia, through mutual agreement, jointly developed marine resources, thereby turning their overlapping claims into a zone of cooperation.

### III. THE IMPACT OF MAJOR INCIDENTS ON REGIONAL SECURITY

The littoral states of the South China Sea began geological surveys in the 1950s and discovered petroleum and gas in offshore areas. The reports indicate that prospects for oil extraction were good based on the Spratlys' seabed geological structures. These surveys served as a fuse for conflicting claims over the Spratly Islands. After the oil crisis in 1973, the ASEAN countries began to place attention on oil development, exacerbating the on going disputes. All the nations bordering on this semi-enclosed sea want to share in its hydrocarbon resource potential, and appear to think that control of some or all of the isolated outcroppings scattered through the sea is a key element to their claim to these resources. During the last few years, the tension in the South China Sea has increased and the legal, political, and military positions of each claimant country has hardened. In the process lives and property were lost, and oftentimes these conflicts have soured diplomatic relations and further strained longstanding animosities.<sup>29</sup>

One factor which has an important bearing on the incidence of territorial disputes between Asian countries is the absence of an all embracing organization through which such disputes might be resolved in a diplomatic manner. Although the sub-

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<sup>29</sup> Oil & Gas Journal, July 13, 1992, Op cit. p. 20.

regional Association of South East Asian Nations (composed of Indonesia, Malaysia, the Philippines, Singapore and Thailand) has played a limited role in this respect, South East Asia does not have its own equivalent organization like the Organization of African Unity or the Organization of American States, with their channels of peaceful settlements of disputes between member states. ASEAN was formed in 1967 to promote regional cooperation in economic, political and cultural affairs (Annex A). Until now the group has given a low profile to security issues, fearing that doing otherwise would lead to accusations by communist countries that ASEAN was forming a collective military alliance.<sup>30</sup> The United Nations Organization itself has, on occasion, successfully filled this void, but in other instances disputes have been aggravated by the lack of any regional forum to which interested parties can refer their claims. However the successful settlement of the Cambodian conflict at an international conference in Paris in October 1991 has finally "opened the way to a new phase in ASEAN relations with Indo-Chinese countries".<sup>31</sup>

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<sup>30</sup> Bob Drogin, "Surprise Accord at ASEAN Meeting could Settle Spat Over Spratly Islands", Los Angeles Times, July 25, 1992. p. A3.

<sup>31</sup> Michael Richardson, "ASEAN Opts For Closer Security Ties", Asia-Pacific Defense Reporter, April-May 1992, p. 32.



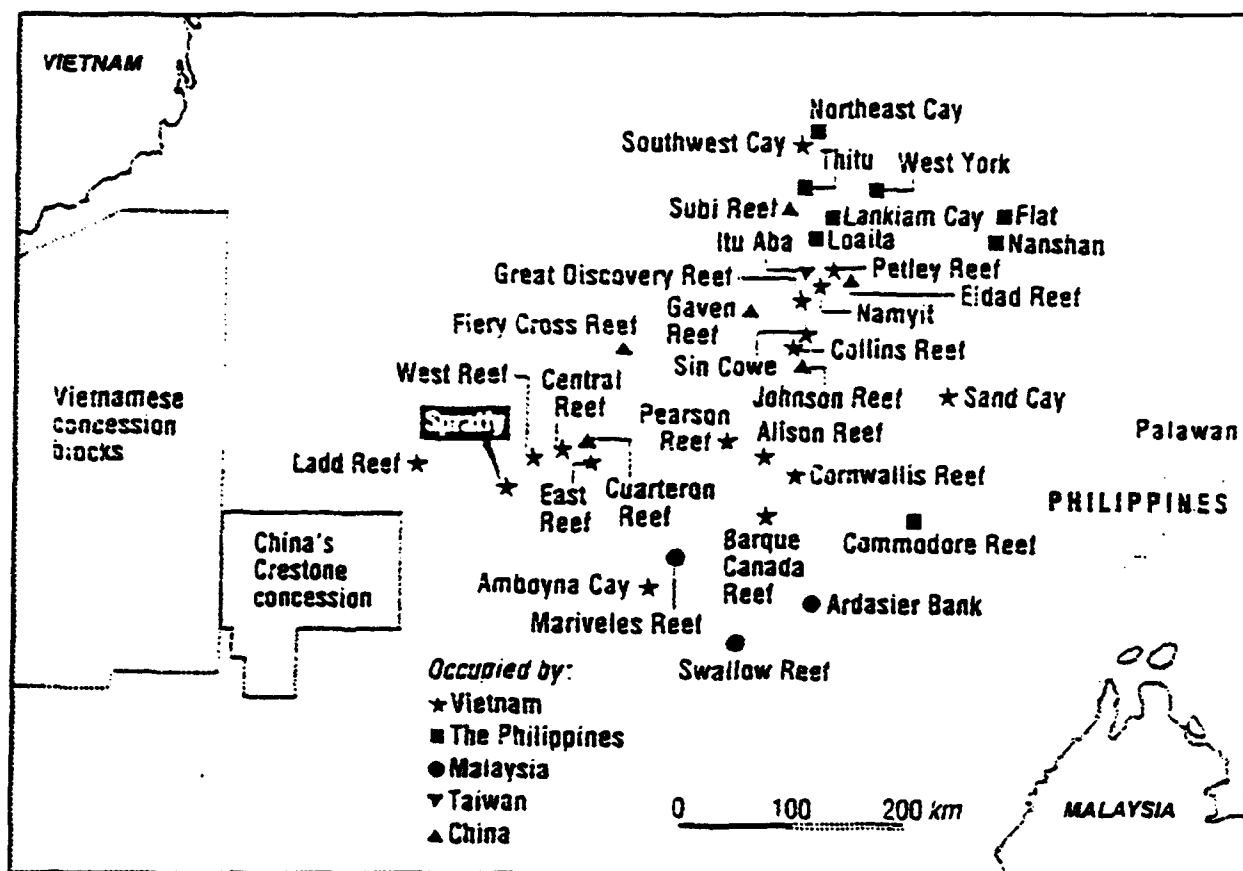
### **A. Scramble For The Spratlys**

Many reasons lie behind the scramble for islands in the Spratlys but the most important is the possibility of oil or gas-bearing geological structures in the South China Sea. As can be seen in the chart (Fig.2) five countries are vying for the disputed islands, while some tied up with foreign companies to develop the oil potential in their respective territorial jurisdiction immediately after the oil crunch in 1973. Some analysts suggest that with the population explosion in China, she may become a net oil importer by the turn of the century and that its interest in the South China Sea may be fuelled by the continuing problem with exploiting the oil-rich Tarim Basin in the Xinjiang region.<sup>32</sup> David Fridley, an expert on the Chinese oil industry at the East-West Center in Hawaii further claims that "China faces a sharply deteriorating oil supply situation. Oil accounted for 27% of exports in 1985, in value terms, but only 5% in 1991".<sup>33</sup> Some other claimant countries have even more reason to be concerned about this oil factor. The Philippines has been about 95% dependent on imported oil, but even the new discovery of oil off Palawan has only slightly reduced importation to about 85%. Likewise,

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<sup>32</sup> "South China Sea, Treacherous Shoals", Far Eastern Economic Review, Aug. 13, 1992, p. 16.

<sup>33</sup> *Ibid*, p. 16.



**FIGURE 2: Scramble for the Spratlys** (Ref. South China Sea Treacherous Shoals, FEER 8/13/92, p.15)

Vietnam was totally dependent on Soviet-supplied oil until it began to pump oil from its offshore field in 1991.

## **B. Major Incidents**

Among the most important armed incidents that occurred in the Spratly Islands happened in July 1971 when a Philippine fishing boat was fired upon by Taiwanese troops garrisoned on Itu Aba. Then President Marcos of the Philippines protested and maintained that after Japan renounced its sovereignty over the islands they had become a *de facto* trusteeship of the allied powers, and that this trusteeship precluded setting up garrisons on any of them without the allies' consent.<sup>34</sup>

Another incident occurred on 20 June 1979 when Vietnamese troops killed 85 Vietnamese refugees whose boat had ventured into the islands where Vietnam had stationed a garrison. It was reported that military forces used heavy arms, including mortars, to carry out this action.<sup>35</sup>

In 1976 there were reports of Philippine military aircraft being fired upon by the Vietnamese while flying near Song Tu Tay (Southwest Cay).<sup>36</sup>

China has also attempted to strengthen its presence in the region, sending naval squadrons periodically into the region.

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<sup>34</sup> Alan J. Day, *Op cit.* p. 330.

<sup>35</sup> Jon Van Dyke & Dale Bennett, *Op cit.* p. 59.

<sup>36</sup> *Ibid*, p. 59.

China made its first armed move into the Spratlys on March 14, 1988, when in the guise of setting up a sea-level weather research station presumably sponsored by UNESCO, the Chinese took control of six islands in the Spratlys. In the process a brief naval engagement ensued where the Chinese sank three Vietnamese transport ships, killed 72 seamen and took nine prisoners. The Soviet Naval Ships which operated from Cam Ranh Bay in Vietnam stayed out in the conflict. Taking a neutral posture, Moscow advised Vietnam and China to resolve their dispute peacefully.<sup>37</sup>

Chinese Foreign Minister Qian Qichen, said after the incident: "What we have carried out in the Nansha islands is a scientific survey, entirely for peaceful purposes. The purpose ... is to monitor the sea, and this action is also designed to meet the proposal in a resolution passed by one of the organizations of the UN". That claim was however denied by UNESCO. Qian promised that "there will be no war in that area if Vietnam refrains from provocations against China and stops the seizure and occupation of the islands, and withdraws all its troops from these islands and reefs".<sup>38</sup> Although there has not been any confrontation since then Vietnam has not withdrawn any of its troops. However, this clash was a major

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<sup>37</sup> Far Eastern Economic Review, Aug. 13, 1992, Op cit. p. 15.

<sup>38</sup> Jerry Cushing, "The Dragon's Long Reach", Far Eastern Economic Review, May 5, 1988, p. 23.

factor in the deterioration of the relationship between China and Vietnam. Apparently both countries continue to fortify their presence in the islands and reefs.

In April 1988, the Malaysian Navy seized 49 Philippine fishermen who had allegedly entered Malaysian waters in the Spratly area near Commodore Reef, which Malaysia had claimed to be within its 200-mile EEZ. The Philippines protested vehemently, arguing that its fishermen were operating within Philippine waters when they were captured. Although the Malaysian government finally decided to release the Philippine fishermen, it declared that this act of generosity did not prejudice Malaysia's claim to the area.<sup>39</sup> This incident has further strained the relationship of both countries that have sometimes bitterly contested Sabah, a territory on the Northeastern part of the Island of Borneo and bordering Indonesian territory. Since Malaysia and the Philippines have overlapping claims to their EEZ, more tension is likely to emerge in the near future.

If these sporadic armed confrontations continue and are not resolved, then a bigger security problem may develop in the region, similar to what happened in 1982 when Great Britain and Argentina went to war over the sovereignty of the Falkland Islands. For the moment China is the most capable among the claimant countries to flex its muscle in the South

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<sup>39</sup> Ji Guoxing, *Op cit.* p. 14.

China Sea, it can call upon 45 major surface combatants, about 100 submarines, a naval task force that could operate at sea for at least 30 days and a naval infantry brigade.<sup>40</sup> Nonetheless, should China continue to aggressively undertake military action similar to what it did in forcibly evicting Vietnamese forces in the Paracels in 1974, there is a strong possibility of armed resistance that will come from the other claimant countries who have not only established garrison in their respective islands but have been gradually strengthening their military capabilities over the years.

### **C. Overlapping Maritime Jurisdictional Zones**

Rival claims to maritime zones generated by disputed possession of offshore islands are among the most frequent territorial disputes that require negotiation or arbitration. For centuries there have been disputes over the breadth of the extension of jurisdiction into the outer seas.<sup>41</sup> Though many countries accepted the three-nautical mile limit for territorial waters, the conference on the Law of the Sea held in Hague in 1930 by the League of Nations failed to reach an agreement on the breadth of territorial seas. Prior to 1945, there had been an acknowledged right or entitlement of a

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<sup>40</sup> Susumu Awanohara, "South China Sea, Washington's Priorities", Far Eastern Economic Review, August 13, 1992, p.18.

<sup>41</sup> Jon M. Van Dyke & Dale Bennett, *Op cit.* p. 80.

coastal state to exercise jurisdiction over the seabed areas contiguous to its coast. This may lie beyond its territorial sea limit. The modern continental shelf concept was brought about mainly by the need to accommodate technological innovations, anticipation of the existence of seabed resources, and the capacity to exploit them. This concept originated from President Truman's proclamation on the Continental Shelf, issued in September 25, 1945. Its rationale was based on the reasonableness and justice of according jurisdiction and control over the natural resources of the subsoil and seabed of the continental shelf to the contiguous nation.<sup>42</sup>

The first United Nations Conference on the Law of the Sea was held in 1958 in Geneva. Four conventions relating to the high seas, territorial seas, fisheries and the continental shelf were drafted. However, there were heated debates on the three-nautical miles versus the 12 nautical miles limits of territorial seas, hence no agreement was reached. The second UN Conference on the Law of the Sea, held in 1960 in Stockholm also failed because of disagreements on the breadth of territorial sea as well as on the territorial sea of islands. The third conference, held from 1973 to 1982 took 20 sessions and nearly a decade to adopt. In 1982, the UN Convention on the Law of the Sea was finalized. The convention includes the

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<sup>42</sup> *Ibid*, p. 19.

traditional form of complete jurisdiction and adds the notion of partial jurisdiction.<sup>43</sup>

The 1982 Law of the Sea Convention stipulates:

- Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles
- In localities where the coastline is deeply indented and cut into, the method of straight baseline joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured
- The coastal state shall not hamper the innocent passage of foreign ships through the territorial sea
- The coastal state may set up a contiguous zone not extending beyond 24 nautical miles from the baselines, and exercise in the zone the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary regulations
- An archipelagic state may draw straight baseline to define the breadth of its territorial sea, the contiguous zone, the exclusive economic zone (EEZ) and the continental shelf
- The sovereignty of an archipelagic state extends to the waters enclosed by the baseline, described as archipelagic waters, regardless of their depth or distance from the coast, and
- The coastal state is entitled to have an exclusive economic zone not extending beyond 200 nm from the baseline.

The 1982 convention, despite its intention to minimize conflict and eliminate ambiguity, is itself a source of new conflict. Under the convention a coastal state may lay claim to at least 200 nautical miles of jurisdiction. Thus, this

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<sup>43</sup> Kenneth R. Simmonds, U.N. Convention on the Law of the Sea, Oceana Publications, Inc., New York, 1983, pp b1-b218.



provision aggravates the existing situation in the Spratly Islands. In essence it is doubtful whether this new definition of continental shelf or EEZ is fruitful to the Southeast Asian coastal states whose claims are always in conflict with the claims of other states. With the Spratlys and the Paracels taken as a base points, all coastal states of the South China Sea will have national jurisdiction, with overlapping claims.

The convention also grants to islands the right to have territorial waters, contiguous zones, an exclusive economic zones and continental shelves in the same way as land territory. Though denying shelf and EEZ rights to rocks which cannot sustain human habitation or economic life of their own, this would definitely lead to more conflicting situations in the Spratlys. The coastal states of the South China Sea will face serious conflicts of interest arising from the ownership as well as the legal status of the islands in dispute. If islands and rocks are measured separately, the South China Sea would be studded with numerous patches of complete or partial jurisdiction zones. If the archipelago theory is applied, large expanses of jurisdiction would come under the states that own the archipelagoes.<sup>44</sup>

The South China Sea islands are very small and are scattered far apart. Based on the stipulations of the Law of the Sea Convention, it seems that they are not entitled to

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<sup>44</sup> Jon M. Van Dyke & Dale Bennett, *Op cit*, p. 21.

have an EEZ, but could have a continental shelf. For the delimitation of the continental shelf of the Spratlys, one may take the inhabited islands such as Itu Aba Island, Spratly Island, Thitu Island, Nansha Island, Flat Island and Swallow Reef Island as base points, draw straight lines connecting these base points and thus define the 200 nautical miles or 250 nautical miles continental shelf.

#### IV. CURRENT THRUSTS TO RESOLVE THE CONFLICT

##### A. Military Options

In addition to the legal initiatives undertaken by the various contending countries, military options seem to be preferred by China and Vietnam. China's military resolve has been heightened after its initial success in an armed confrontation with Vietnamese Forces in the Paracel Islands in 1974. Following the January 1974 clash, China consolidated its authority over the entire Paracel archipelago. As China consolidated its control over the Paracels, Vietnam moved to secure its interest in the Spratly. The collapse of the U.S.-backed Saigon government in April 1975 encouraged Hanoi to seize control of six islands previously held by South Vietnamese force.<sup>45</sup>

Once the Paracels were firmly in Chinese hands they served as stepping stones for a Chinese advance further south to the Spratlys. The first Chinese military incursion occurred on 8 November 1980 when two type Hong-6 bombers patrolled the Spratly area. This was followed by repeated naval air reconnaissance patrols in 1983. This culminated in the biggest Chinese military power projection that occurred in May of that

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<sup>45</sup> John W. Garver, "China's Push Through the South China Sea: The Interaction of Bureaucratic and National Interest", The China Quarterly, December 1992, pp. 1005-1006.

same year, when a navy troop carrier ferried 85 commanders of naval vessels, professionals, and chief navigators, 15 school and college instructors, 40 naval and fleet operations and navigation cadres, 13 scientific research cadres and 235 sailors surveying James Shoals, one of the coral reefs of the Spratly islands group for 30 days.<sup>46</sup> Since then military clashes have almost occurred on several occasions. According to a Chinese report, Vietnamese airplanes flew over Chinese-held islands in the Spratlys, while Vietnamese warships monitored and harassed Chinese vessels involved in survey and construction activities.<sup>47</sup> On another occasion, Vietnamese personnel disembarked from a ship to challenge a Chinese survey team on a reef, only to be warned away by a Chinese warship. Another incident occurred on 31 January 1988, when a Vietnamese navy freighter and an armed fishing vessel left West Reef and approached Fiery Cross Reef loaded with construction materials and more than 40 personnel. They were subsequently intercepted and turned back by Chinese warships. Another incident occurred on 18 February 1988 when a Vietnamese minesweeper and an armed freighter approached Cuateron Reef where a Chinese investigation team was working ashore, but the presence of Chinese warship again turned back the

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<sup>46</sup> *Ibid*, p. 1008.

<sup>47</sup> *Ibid*, p. 1012.

Vietnamese ships.<sup>48</sup> Diplomatic protests were made by both countries, but it is worthwhile to note that on 22 February the Chinese Ministry of Foreign Affairs stated that..."Vietnam has no right to interfere with Chinese vessels patrolling their own territorial waters. It is Vietnam that has occupied illegally islands and reefs in China's Nansha Islands. If the Vietnamese side ignores the consistent stand of the Chinese government and hinders our legitimate activities in these areas, it will have to bear the responsibility and the consequences".<sup>49</sup> Thus, these repeated confrontations produced an armed clash on 14 March 1988. Tension further increased when in the same month Vietnamese forces conducted a combined air-maritime exercise simulating a battle with Chinese forces in the Spratlys.<sup>50</sup>

Taiwan, however, strongly indicated that she would be compelled to support the Peoples Republic of China in the event that a military solution would be undertaken by China and Vietnam to resolve their differences over the Spratlys. This would further aggravate the conflict, knowing fully well that Taiwan had recently purchased several U.S. F16 and Mirage 2000 fighter aircraft and new Lafayette-class frigates that

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<sup>48</sup> *Ibid*, pp. 1012-1013.

<sup>49</sup> *Ibid*, p. 1013.

<sup>50</sup> *Ibid*. p. 1013.

are being constructed in France in pursuit of its military modernization program.<sup>51</sup>

The danger about this kind of military solution is similar to the Falkland crisis in 1982, when diplomatic negotiations broke down and the claimant countries resorted to military action to settle their differences over the sovereignty of the Falkland Islands. Should China and Vietnam insist on their historical rights, which are strongly supported by their respective nationals, then both countries maybe dragged deeper into the brink of war. There maybe parallels here with the Falklands case. Lowell S. Gustafson who wrote The Sovereignty Disputes over the Falkland (Malvinas) Islands, claims that Adolfo Silenzi de Stagni an Argentinean national called on the military junta in 1981 to assume the historic responsibility to occupy the Falkland islands ... before January 3, 1983.<sup>52</sup> Negotiations to resolve the territorial dispute over the Falkland Islands between England and Argentina began as early as 1965 through the United Nations Resolution 1514. In this resolution, England based her sovereignty claim on the principles of self-determination and limited acquisitive prescription, while Argentina based her position on an irreconcilable historical claims. These resolutions were

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<sup>51</sup> Julian Baum, "Taiwan Arms and Greased Palms", Far Eastern Economic Review, March 3, 1994, pp 14-15.

<sup>52</sup> Lowell S. Gustafson, The Sovereignty Disputes over the Falkland (Malvinas) Islands, Oxford University Press, 1988, p. 117.

doomed to fail from the very start because no party wanted to compromise and some Argentinean hardliners favored the use of force in resolving the conflict.<sup>53</sup> Some Argentinean nationals like Costa Mendez, on 9 May 1982, flatly stated that Argentina's sovereignty over the Falklands should be the objective of the negotiations.<sup>54</sup> Likewise the Communist Party of Argentina declared unequivocal support for the restoration of national sovereignty over the archipelago and insisted that Argentina should under no circumstances relinquish its sovereign rights over the islands.<sup>55</sup>

On the other hand, the British position as of 3 April was that the Falkland Islands must "remain British" and be returned to British sovereignty. The Prime Minister at that time, Margaret Thatcher, who was dubbed the "*iron lady*", was willing to risk the lives of British servicemen in order to defend British sovereign territory, the British way of life, and the right of the British people to determine the future of the Falkland Islands.<sup>56</sup>

Although Argentina was fighting a losing war against a relatively superior foe, the Argentinean leaders believed that "losing the war was not so important if just fighting it

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<sup>53</sup> *Ibid*, p. 118.

<sup>54</sup> *Ibid*, p. 121.

<sup>55</sup> *Ibid*. p. 121.

<sup>56</sup> *Ibid*. p. 121.

improved the chances later for the negotiated solution".<sup>57</sup> Thus, the result is now history where the lives of around 1,000 young men were lost and the combatant nations lost billions of dollars, plus a loosening, to some degree, of the ties among western states.

The ASEAN states may learn some lessons from that experience. Even as China and Vietnam have cautiously avoided any military action against the other claimants, this did not prevent them from modernizing their military capability nor improving the fortification of their garrisons in the Spratly islands. On the other hand, the aggressiveness of both communist countries is giving mixed signals to the rest of the ASEAN countries. South-East Asian countries want to keep China and Vietnam at arms' length by controlling the South China Sea islands that are closest to their territory. They hope that Peking will become a friendly power and a trusted friend.

Already Malaysia is acquiring 30 Soviet Mig 29s at a fairly reasonable price, has ordered two frigates from Britain, and signed a tentative agreement with a Swedish shipyard for two submarines. These Mig 29s bought from Russia are considered the latest version of the Fulcrum and include R-27 medium-range missiles and the R-73 short range infrared guided missiles which are widely viewed as the most sophisticated IR-guided AAM currently in existence and a decade ahead

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<sup>57</sup> *Ibid*, p. 123.



of current Side-winder missiles.<sup>58</sup> This military buildup by Malaysia is seen as a deterrence action against any claimant countries and as a measure to enhance its security posture in the South China Seas.

On the other hand, the Philippines, despite its economic problems and the sharp drop of military aid that was previously provided by the U.S. prior to the pull-out of its forces stationed at Subic Naval Base and Clark Air Force Base, has embarked on a 10-15 year military modernization program amounting to around U.S.\$1.61 billion to enhance its military capability and protect its interests in these islands. This amount is supposed to replace the annual U.S. military aid of U.S. \$ 200 million provided up until 1991, representing about 67% of the Armed Forces' acquisition and routine operating costs. This modernization program includes the purchase of three fast attack boats equipped with Exocet anti-ship missiles from Spain and Australia, to enhance naval capability and to respond to the perceived Chinese threat.<sup>59</sup>

Only Vietnam for the moment is not engaged in any significant upgrading of its naval capabilities, due to acute economic problems. However, to compensate for its lack of frontline equipment, Vietnam has been beefing up its garrison

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<sup>58</sup> J.N. Mak, "Malaysia's Mig Shock Asia", Pacific Defence Reporter, Aug-Sept 1993, p. 9.

<sup>59</sup> Tai Ming Cheung, "Fangs of the Dragon", Far Eastern Economic Review, August 13, 1992, p. 19.

on some of the islands in the Spratlys, including burying tanks into the ground, using them as gun emplacements.<sup>60</sup>

If a diplomatic solution is not achieved, the claimant countries will harden their positions. War is bound to happen, just like the Falklands crisis in 1982. The sovereignty issue was a major stumbling block in the Falklands crisis and apparently China, Vietnam and Taiwan have employed historical precedents as the basis for their claims over the Spratly Islands. If ongoing diplomatic initiatives break down, as happened with the case of Great Britain and Argentina, then the inevitable will happen.

#### **B. Sharing of Maritime Boundaries**

These conflicts have all the ingredients of territorial sovereignty, and overlapping maritime jurisdictions and interests, that requires the full cooperation of all parties concerned. The end of the cold war, coupled with the successful resolution of the Cambodian conflict, have gradually brought about fundamental changes not only in the resolution of the conflict in the South China Sea but in the Asian-Pacific region in general.

One solution to this emerging crisis is the sharing of sovereignty over the Spratly Islands by all claimant countries, including clear delineation of their respective

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<sup>60</sup> *Ibid*, p. 20.

maritime rights. This is what some of the claimants want, but for the moment China will not accept the sharing of sovereignty. China's recent power projection in the South China Sea, coupled with the proclamation of a new law called the Territorial Waters Act that was enforced in February 1992, clearly indicates that its ultimate aim is to assert its sovereign right over these islands. In the long run China hopes to replace the United States and Russia in the region. According to B.A. Hamzah, the Assistant Director-General of Malaysia's Institute of Strategic and International Studies, claims that what we are now witnessing is a **Pax Sinica** in the making, in place of a reluctant **Pax Americana** and impotent **Russia**.<sup>61</sup> These initiatives are clearly manifested by workers in Shanghai shipyards who are busily putting the finishing touches to a new generation of warships that will enhance the firepower and lengthen the reach of the Chinese navy. Up until the early 1980s, Chinese warships stayed close to their home ports and operated mainly in China's northern waters, coping defensively with the navies of the Soviet Union and Taiwan. But the focus began shifting, with the increasing possibility of discovering oil, as China laid claims to almost all of the islands in the South China Sea.

One way to resolve this conflict is to adopt a model that would avoid the use of force. The Timor Gap model could be

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<sup>61</sup> B.A. Hamzah, "China's Strategy", Far Eastern Economic Review, August 13, 1992, p. 22.

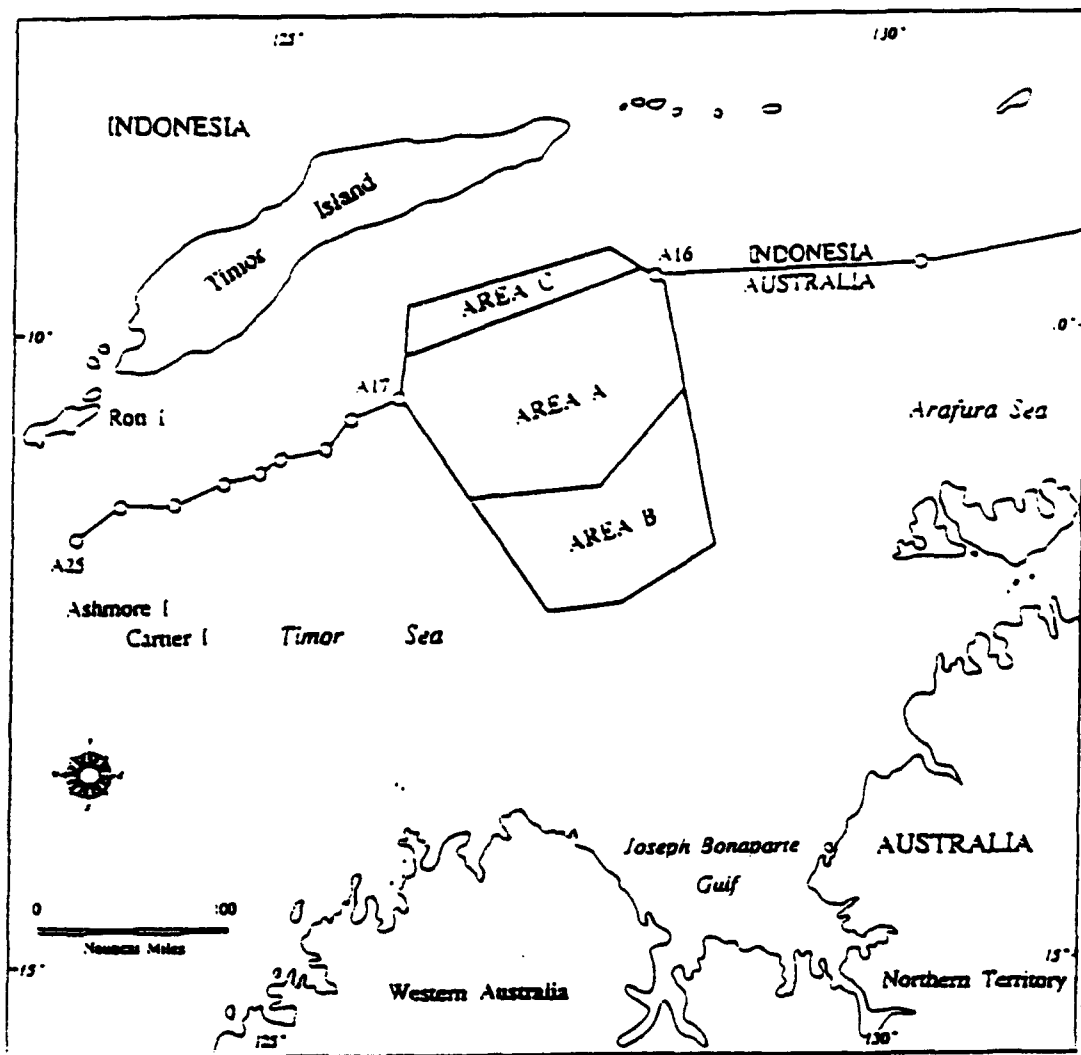
presented for this particular case. Both contending parties, namely Indonesia and Australia, began exploring the possibility of a provisional joint development regime to operate pending final delimitation of the seabed. The negotiations culminated on September 5, 1988 when the governments of both countries announced that an agreement had been reached in which the Timor Gap had been divided into three areas in a zone of cooperation (fig 3). The treaty created a Zone of Cooperation covering a surface area of about 60,500 square kilometers. This treaty sets out principles relating to the exploration and exploitation of petroleum resources as embodied in the following:<sup>62</sup>

- Annex A, which contains the designation and description of Areas A, B, and C of the Zone of Cooperation, including maps and geographical coordination of the turning points.
- Annex B, which sets out the Petroleum mining code.
- Annex C, which is a Model Production Sharing Contract, setting out the detailed arrangements for the exploration and exploitation of petroleum resources in the area of the Zone; and
- Annex D, which is a Taxation Code for the avoidance of double taxation with respect to activities in this joint area of exploration and exploitation of the petroleum resources.

In order to ensure equality of opportunity in relation to employment for both Australians and Indonesians and so that

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<sup>62</sup> Francis Auburn and Vivian Forbes, The Timor Gap Treaty and The Law of the Sea Convention, The University of Chicago Press, 1993, pp.44-45.



**FIGURE 3: Zone of Cooperation in the Timor Gap** (Ref. The Timor Gap Treaty and the Law of the Sea Convention, p. 45).

one operator is not disadvantaged over another, provision is made for either:

- A tripartite committee of Indonesian government, employer, and employees to provide conciliation and arbitration for Indonesian workers in Area A.
- Australian workers in the Area to be represented by their unions.
- The Industrial Relations Commission to provide conciliation and arbitration for Australian workers; or
- Preference to be given to employing nationals or permanent residents of both countries.

Indeed the Timor Gap Treaty, despite the objection of Portugal, has been in effect since 1991. As seen within the overall framework of Indonesian-Australian relations, it is a most detailed regime for sharing a joint development ventures for Continental Shelf petroleum resources. It may prove useful for purposes of resolving the Spratly Islands conflict.

A constraint or weakness in this kind of agreement is that this is a bilateral agreement whereas in the case of the Spratly Islands there are six main players, hence they should be carefully considered. One of the elements is the settlement of the outstanding grievances between Vietnam and China, outside the core Spratly area-on land, in the gulf of Tonkin, and at sea in the Vanguard Bank area where China awarded a concession to Crestone Oil of the United States. One way out would be for China and Taiwan to set aside their historic claims to most of the South China Sea in exchange for a

combined share in a multilateral Spratly Development Authority, which would in turn administer and manage the exploration and exploitation of resources in this area. If Vietnam receives a favorable settlement in the Tonkin Gulf and Vanguard Bank areas, it might consider settling for a lesser share in the Spratly area. On the other hand, since Brunei claims only a tiny portion of the core area, its share should be small. The remaining shares would be equitably allocated among Vietnam, the Philippines, Malaysia and Taiwan. Indeed, under this sharing regime the area could be demilitarized, sovereignty claims would be frozen, and the Authority would resolve user conflicts, facilitate exploration and development of resources, manage fisheries and maintain environmental quality. The legitimate transit of vessels would likewise be allowed. Another role of the said Authority might be to promote international cooperation in scientific research and in protecting the vulnerable ecosystems.

### **C. Towards A Spirit Of Cooperation**

Twenty-one years ago ASEAN wishfully called for Southeast Asia to become a Zone of Peace Freedom and Neutrality (ZOPFAN). During that bygone era in the region there was an intense superpower rivalry between the then Soviet Union and the United States, coupled with an adventurous Soviet-backed Vietnam, making the ZOPFAN concept more wishful thinking than reality. Today, the end of the cold war has brought a tremen-

dous change. Hence, during the annual ASEAN foreign ministers meeting from 21-26 July 1992 in the Philippines, attended by representatives from China and Vietnam the meeting focused to an unprecedented extent on security in the South China Sea, particularly the Spratly Islands. ASEAN's brief statement on the South China Sea urged the settlement of all sovereignty and jurisdictional claims without resorting to force. It also called on all countries to cooperate to ensure the safety of maritime navigation and communication and to ensure other forms of environmental and security cooperation.<sup>63</sup>

Apparently the move towards a common exploration and sharing of resources, with the problem of sovereignty pushed aside for a certain period of time, is shaping up to be the consensus within the region. It is irrelevant who is presently occupying the islands. Joint venture enterprises should be established instead and agreements on income distribution should be signed. In August 1990, Chinese Prime Minister Li Peng offered talks on the joint development of the disputed Spratly Islands. He said..."China is ready to join efforts with the Southeast Asian countries to develop the islands while putting aside for the time being the question of sovereignty".<sup>64</sup>

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<sup>63</sup> Rodney Tasker, "ASEAN Facing up to Security", Far Eastern Economic Review, August 6, 1992, p. 8.

<sup>64</sup> Sheldon W. Simon, The Regionalization of Defense in Southeast Asia, The National Bureau of Asian Research, Seattle, June 1992, p. 14.



This statement of Li Peng is opening a bright spot for peaceful negotiations, and with the growing improvements in management and technological advancement offered by the leading oil companies, a move towards a peaceful solution would bring benefits to all concerned. Over the years there has been a shift towards dramatic change in the approach to effective management of ocean resources. Marine resources are interlinked and interdependent, particularly resources lying across the national marine zones. The migratory and fluid nature of marine resources, such as petroleum deposits or transboundary pollution and tuna transcend national boundaries and raises unique management problems. Fish species exist in an ocean environment moving through many exclusive economic zones (EEZ) and are inevitably exploited by many nations. The character of petroleum deposits permit their removal from any direction without regard to any fixed boundary that may exist. The World Commission Report on Environment and Development has underscored this fact... "the shared resource characteristics of marine regional seas makes forms of regional management mandatory. Hence the need for an effective utilization of the marine resources depends on the development of cooperative and functional arrangements".<sup>65</sup>

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<sup>65</sup> Joseph S. Wariota & Elizabeth Mrema, Regional Cooperation: The Needs of the South, The University of Chicago Press, 1993, p. 92.

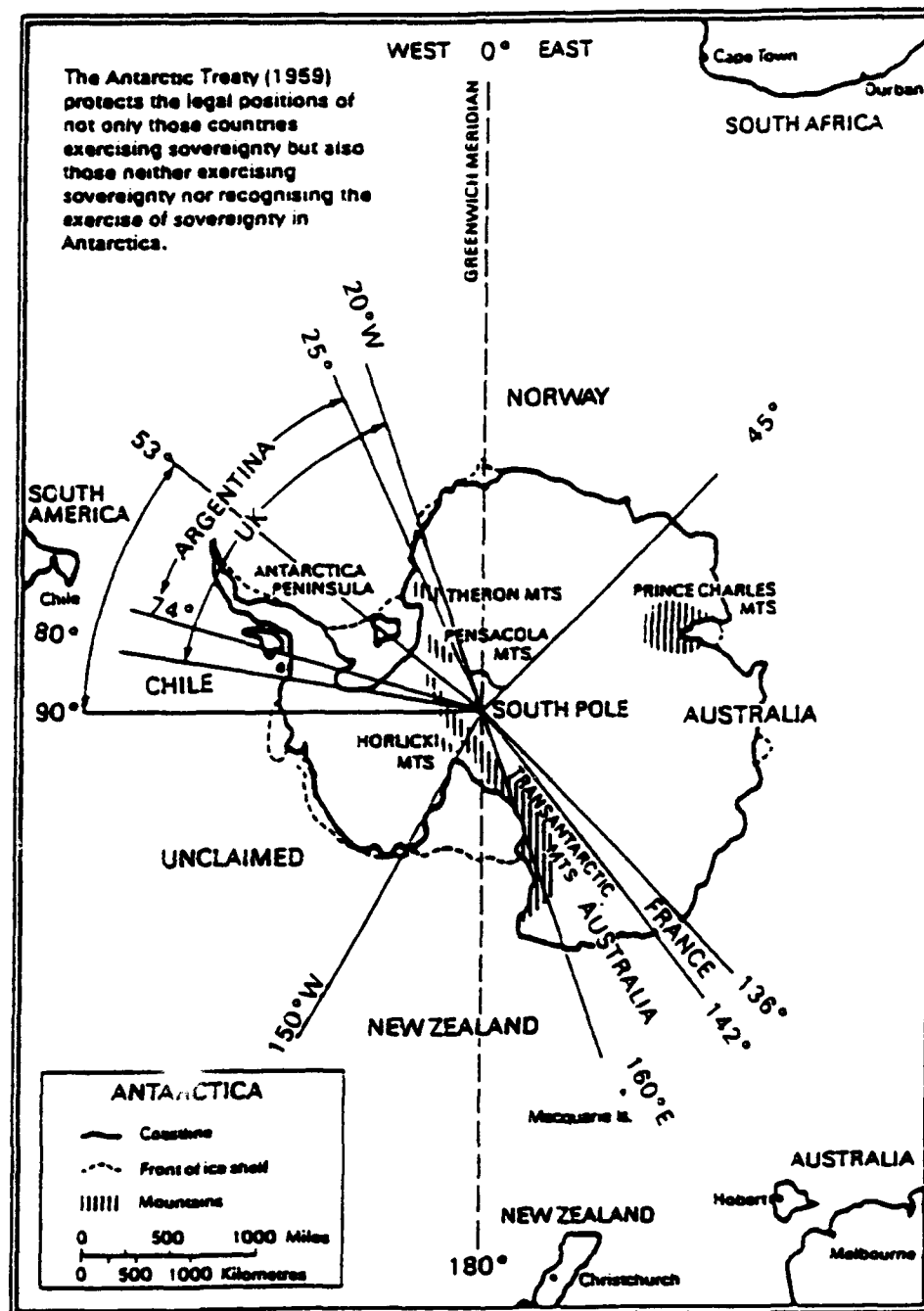
The conflict in the Spratlys, aside from territorial claims, has been sparked by the presence or potential of hydrocarbon resources. It is essential to note that boundaries in the ocean that delimit the functional jurisdiction of a coastal state often do not coincide with the location of marine resources.

In essence most ocean areas are interdependent in nature and cross many artificial boundaries. Since the 1980s, the world has witnessed a growing awareness of global interdependence in economic, political, and environmental matters and the need for a more holistic approach to these issues. This awareness has led to the development of an approach to marine jurisdiction that emphasizes functional concerns.

It may be noted that questions concerning sovereignty over islands or territory are excluded from maritime boundaries despite the settlements procedure under the 1982 LOS convention (Art 298 [1]) and therefore requires the express consent of the parties for an acceptable settlement procedure. Moreover, resolving issues concerning maritime boundaries has become time consuming. The contending parties must therefore endeavor to negotiate some provisional arrangements for reducing tension and promoting cooperation, to include a joint development zones.

A model that could also be used in drafting a Spratly Treaty is the Antarctic Treaty of 1959. Antarctica, because of its remoteness and unique physical and climatic characteris-

tics, lay unexplored and undeveloped for several centuries. Antarctica covers a wide area of 14 million square kilometers, ninety-nine percent of its surface is covered by a thick ice sheet, with an average depth of 2 kilometers, constituting over 90 percent of the world's ice. It is the coldest continent. It is also the highest with an average elevation of 2500 meters, the driest with an average precipitation of 10 cm, and the windiest. However, expeditions and scientific activity peaked in the International Geophysical Year (IGY) in 1957-58 when the twelve nations involved in the Antarctic, seven of which had made territorial claims (Fig.4), agreed that these political and legal differences should be set aside in the interest of carrying out scientific research in close and peaceful cooperation. This model calls for the setting up of a cooperation regime under which claims would be frozen, and a Spratly Authority established to eliminate conflict and facilitate the management of the development of oil, maritime resources, as well as the maintenance of environmental quality. The Antarctica Treaty froze territorial claims, suspending them until the pact became subject to review in 1991. The Treaty was signed in 1959 by the twelve nations which had maintained stations there during the IGY namely Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the United Kingdom, the United States, and the USSR. Sixteen nations have joined since it came into force in 1961 namely Bulgaria, Brazil, China,



**FIGURE 4: The Antarctic** (Ref. The Antarctic Treaty, Canberra Pubs., '83, p.2)

Czechoslovakia, Denmark, the Federal Republic of Germany, the German Democratic Republic, India, Italy, the Netherlands, Papua New Guinea, Peru, Poland, Romania, Spain, and Uruguay. This treaty explicitly aims to further the purposes and principles of the United Nations Charter. Among its important features are the following:<sup>66</sup>

- Stipulates that Antarctica should forever be used exclusively for peaceful purposes and not become the scene or object of international discord.
- Prohibits nuclear explosions and the disposal of nuclear waste, and measures "of military nature".
- Guarantees freedom of scientific research throughout Antarctica, and promote the exchange of information on scientific programs, of scientific observations and results, and of scientific personnel.
- Establishes a comprehensive system of on-site inspection by observers to promote the objectives and ensure the observance of the Treaty; and
- Removes the potential for sovereignty disputes between the Treaty parties. This safeguard is contained in Article IV, which ensures that the legal position with respect to sovereignty of the Treaty parties is not prejudiced by any acts or activities taking place during the lifetime of the Treaty. NO New claim, or enlargement of an existing claim, may be asserted while the Treaty is in force (Annex B).

There are differences between the Antarctic and the Spratlys. Antarctica is remote, unmilitarized, uninhabited and costly to develop. In contrast the Spratly Islands are newly discovered, surrounded and militarily occupied by all claimant countries, strategically important and has potentially vast

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<sup>66</sup> The Antarctic Treaty, Canberra Publishing and Printing Co., 1983, pp. 4-6.

wealth. However it is worthwhile to note that the Antarctica Treaty removes the basic obstacle of resolving the territorial disputes and above all prohibits the use of these lands for the establishment of military bases or fortifications as well as the testing of any type of military weapons or the use of these lands for nuclear explosions. These provisions are good references with regard to the settlement of the Spratly issue. As regards to the formulation of a Spratly Treaty the contesting countries should explore the possibility of soliciting the assistance and cooperation of regional as well as international organizations to help in the formulation of such a treaty, as well as the creation of an appropriate infrastructure for the Spratlys. Although there are some limitations of these international and regional organizations, they could initially provide the needed structure and mechanisms that would help reduce the lingering tensions over the Spratly Islands. These includes among others, the United Nations Convention on the Law of the Sea (LOS Convention), Tanzanian Commission for Science and Technology (TCST), Indo-Pacific Fishery Commission (IPFC), the Indian Ocean Fishery Commission (IOFC), and the Indian Ocean Marine Affairs Cooperation Programme (IOMAC).<sup>67</sup> Within the region there are existing organizations such as ASEAN, Pacific Economic Cooperation Conference (PECC), and

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<sup>67</sup> S.P. Jagota, Maritime Boundary and Joint Development Zones: Emerging Trends, The University of Chicago Press, 1993, pp. 128-129.

Asia Pacific Economic Cooperation (APEC) forum. Moreover, the existing bilateral agreements among contesting countries to jointly develop marine resources in their common boundaries such as the fishery agreement adopted by Malaysia and the Philippines, and the joint fishing rights arrangements between the Philippines and Taiwan, are steps toward cooperative arrangement.<sup>68</sup>

#### **D. United States Role As A Mediator**

Only in recent years have development prospects for oil and hydrocarbons in the South China Sea become bright, drawing many foreign investors. However, they are hampered by the brewing conflict in the Spratly Islands and their common desire is for a final resolution of the conflict before embarking on a full time development of the oil potential underneath this ocean floor. The Mobil Oil Corporation pioneered a commercial oil drilling operation off the coast of Vietnam at the height of the Vietnam war, but was forced to vacate in favor of a joint Vietnamese-Russian venture following the communist Vietnamese victory in 1975. Thereafter the United States imposed a trade embargo, thus shifting the interests of the U.S. oil companies to undertake joint ventures with China and the Philippines. Vietnam, on the other hand, signed eleven production sharing contracts in 1988 to

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<sup>68</sup> Mark J. Valencia, "A Spratly Solution", Far Eastern Economic Review, March 31, 1994, p. 30.

develop oil along its territorial boundaries. These companies include Royal Dutch/Shell, a giant Dutch-British joint venture; Total; Broken Hill Proprietary (BHP); British Petroleum (BP); Enterprise Oil of Britain; The Oil and Natural Gas Commission of India; Petro Canada; Petrofina of Belgium; Petronas, a Malaysian state-owned oil company; SCEPTER Resources of Canada; and a consortium led by SECAB of Sweden and International Petroleum Ltd. of Canada.(Fig. 5).<sup>69</sup> Not to be outdone, and to remove the barrier for the American companies, these firms strongly lobbied for the lifting of the U.S. trade embargo that was finally approved on February 3, 1994. Earlier, in June of 1992, a leading U.S. oil company, the Crestone Energy Corporation of Denver, Colorado, started laying the ground work for a joint development approach between China and Vietnam over the areas where they have a common boundary. These arrangements may signal the start of a cooperative regime that is hampering the development of oil by other claimant countries. The other claimant countries have a great deal at stake in the potentially hydrocarbon rich South China Sea. At present Malaysia, the earliest oil operator in the sea among the claimant countries, is producing oil from ninety oil wells and plans to spend \$210 million for South China Sea development over the next three years. Brunei operates nine oil fields in the South China Sea, where it

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<sup>69</sup> Murray Hiebert, "Second Time Lucky?", Far Eastern Economic Review, May 7, 1992, p. 64.





FIGURE 5: Foreign Oil Exploration off the Coast of Vietnam  
(M.Hiebert, FEER 5/7/92 P. 65).

produces 143,000 barrels per day and is targeting a jump in production. Although the Philippines produced a modest amount of oil in 1991 in its oil field off Northwest Palawan, Alcorn International and Royal Dutch/Shell Group plan to increase drilling wells within the Philippines 26,000 square km sector of the South China Sea.<sup>70</sup>

While the claimant countries are strengthening their claims over the Spratlys, there seems to be a common concern for resolving this crisis through peaceful means, even to the extent of seeking the assistance of the United States as a mediator. In fact these sentiments were strongly echoed by members of the ASEAN ministerial conference on 21-26 July 1992 in Manila, regarding the territorial disputes over the Spratly Islands. "For the first time all six members openly called on the United States to maintain a comforting military balance in the region".<sup>71</sup> The U.S. presence traditionally served to balance not just the Soviet threat but the overall security posture in the region, which includes a nuclear China, a Japan with unrivaled economic and growing military potential, and a volatile North Korea.

In response to this call, U.S. President Bill Clinton has clearly articulated the American role in the region during the summit for the fifteen members of the Asia-Pacific in Seattle,

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<sup>70</sup> Oil & Gas Journal, July 13, 1992 Op cit. p. 21.

<sup>71</sup> Far Eastern Economic Review, August 6, 1992, Op cit. p. 8.

December 1993 when he stated..."Imagine an Asian-Pacific region in which robust and open economic competition is a source of jobs and opportunity without becoming a source of hostility and instability"<sup>72</sup> It is thus very clear where the United States stands on the issue of conflict in the Spratly Islands and the South China Sea. The United States position on the Spratlys and the South China Sea is one of neutrality in the territorial disputes. Washington is not making any judgments on the merits of the claims by any of the contesting countries over the Spratlys and has no legal position; it is for preserving the freedom of navigation; it supports a peaceful resolution and opposes any country dominating or enforcing its claim militarily.<sup>73</sup> Engaging in economic competition would be in the interests of everyone, especially when these areas could provide an alternative source of oil for all countries of the world.

Indeed there are varying interests of the United States in Asia, either founded on historical precedents or on longstanding alliances developed during the cold war era. As noted by Edward A. Olsen and Richard J. Ellings..."It will be necessary for Americans to pay attention to Asia, but increasingly on a

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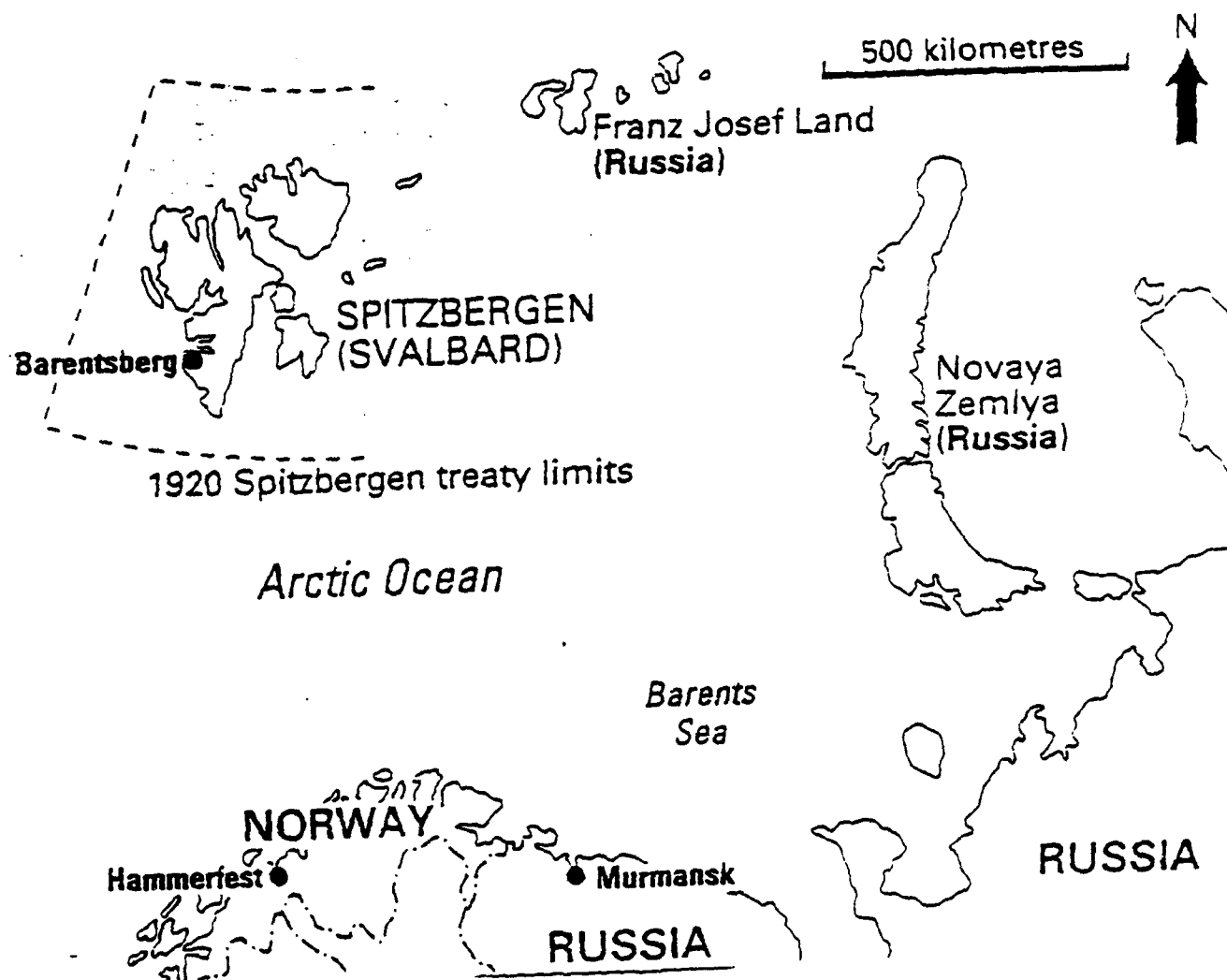
<sup>72</sup> Gordon Crovitz, "The Pacific Century, its Beginning Ahead as Scheduled", Far Eastern Economic Review, December 30, 1993 & Jan 6, 1994, p. 32.

<sup>73</sup> John F. Morton, "U.S. Optimistic That Spratly Islands Dispute will resolve Peacefully", Asian Defence Journal, Dec. 1993. p.

selective basis on their own terms to the degree possible. Americans need to be in the driver's seat of their country's destiny, less dependent upon the vagaries of partners and freer of unwanted risk, cost and liabilities. Like champion athletes in an endurance race, great powers need to choose wisely when they draft their competitors and when they lead-when they let others assume primary responsibility and cost and when they assume these themselves".<sup>74</sup> This pragmatic peaceful suggestion brings to mind the major role of American leadership in resolving lingering territorial disputes such as the Spitzbergen Island conflict contested between Norway and Russia. The United States led in the formulation of the Spitzbergen Treaty, of 1920 because of the interests of an American mining company, Ayer and Longyear which were mining coal in commercial quantities since the 1920s and because of its strategic importance of guarding against the Soviet buildup in the Murmansk-Kola peninsula area during the cold war period. Spitzbergen forms an archipelago consisting of several large and small islands that lies 400 nautical miles off the Norwegian mainland (Fig 6). Just like the disputes over the Spratlys, the claimant countries involved in the Spitzbergen area invoked historical, scientific and economic interests, in addition to geographical proximity. The treaty

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<sup>74</sup> Edward A. Olsen & Richard J. Ellings, Asia's Challenge to American Security, The National Bureau of Asian Research, Seattle, June 1992, P. 23.



**FIGURE 6: Spitzbergen** (An Atlas of World Political Flash-points, 1993 p. 190).

that was formulated was the result of the interaction of private economic interests and the full endorsement of the U.S. congress and the State Department. In essence, this treaty clearly recognized the full sovereignty of the islands as Norwegian, but it also guaranteed the rights of the United States and other signatories to have access to the islands, including the equal enjoyment of fishing and hunting rights on the island in the territorial waters, and also their equality in maritime, industrial mining, and commercial activities.<sup>75</sup> This treaty has resolved the conflict and the islands continue to be demilitarized while Norwegians and Russians continue to jointly mine coal to serve their respective economic interests as well.

The United States, as a leading world power, could help achieve a similar resolution of the Spratly conflict by peaceful means, especially with its economic interests in the region and the presence of several U.S. oil companies desiring to participate in developing oil in the South China Sea area.

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<sup>75</sup> Elen C. Singh, The Spitzbergen (Svalbard) Question: United States Foreign Policy, Universitetsforlaget, Oslo, Bergen and Tromso, 1980, p. 130.

## V. CONCLUSION

There has been a gradual increase of the military buildup in the Spratly Islands since the m by claimant countries, composed of China, Vietnam, Taiwan, Malaysia, Brunei and the Philippines. Apparently, each contesting country is continuously solidifying its respective claims in view of its interests ranging from the prospect of oil discoveries and the emerging trend toward more maritime space by virtue of the 200 miles exclusive economic zone concept. There have been sporadic military confrontations among claimant countries over the Spratlys but the most serious military battle was the one fought between China and Vietnam in March 1988. Except for Brunei, the other claimant countries have continued to beef up their garrisons in their respective islands in the Spratlys. However, the end of the cold war has brought about a dramatic change and countries in the region have sought peaceful solutions. Similarly, the United States, despite the pullout of its military contingent in the Philippines, supports a peaceful resolution of the disputes and wants to preserve freedom of navigation in these vital sea line of communications in the South China Sea.

#### **A. BURY THE HATCHET**

Its about time that these contending countries settle their longstanding animosities and historical claims or "bury the hatchet", so to speak, and move toward a pragmatic development approach in resolving this brewing conflict in the Spratly Islands. Cooperation and not military action should be pursued to benefit everyone and to insure the continued stability that is the precondition for developmental growth in the South China Seas. It is essential that confidence building be pursued by all claimant countries otherwise the inevitable will happen, just as earlier explained with regard to the Falkand War in 1982. Moreover, the events of World War II are still very vivid in the memory of all Asian countries when Japan not only forced its will upon Asian countries in the pursuit of its East Asia Co-Prosperity Sphere policy but also projected its military power as far as Hawaii to challenge a powerful state such as the United States, thus causing the outbreak of the Pacific War. It is, therefore, high time that all parties declare the Spratlys a demilitarized, nuclear weapons-free zone.

In the same vein the Asian countries are very wary of the mixed signals shown by China towards its claims, not only over the Spratly Island group, but their historical claim over all islands in the South China Seas. China wants to resolve the Spratly issue peacefully, but at the same time asserts her inviolable claim over all the islands. Besides, China is the



only contesting country that possesses weapons of mass destruction and indications show that it is gradually transforming itself to be a hegemonic power in Asia. China's massive military buildup, maneuvers on land and in the South China Sea, and its shift towards a blue water navy, are sending shock waves to the other contesting countries. For the moment no combined Southeast Asian countries could equal the military power of China today and this is what worries not only the contesting countries but all the other nations in the region as well. The apparent buildup of military capabilities in the region does not augur well, but will only strain relationships, discourages the flow of much needed foreign investment, and further create suspicions that may eventually jeopardize the economic gains so far attained in this region. It is high time that this brewing tension in the Spratlys should be resolved so that the enormous quantity of oil reserves may be fully developed to help provide economic well being among the contesting countries. Furthermore, the whole world in general would benefit once a commercial quantity of oil is allowed to flow uninterrupted from these offshore fields.

#### **B. MARCH TOWARDS A COOPERATIVE REGIME**

The call of the ASEAN countries for a peaceful solution should be pursued more relentlessly in future ministerial conferences. Perhaps a cooperative spirit should now prevail

over their own national interests. They cannot forever depend on the security guarantee provided by the United States because it too is constrained by its own security and economic interests in the region. As John J. Arquilla noted in his article, "Constraints on Regional Deterrence After the Cold War" when he said that "clearly, the greatest constraint imposed by economic factors lies in the likelihood that ... American deterrent efforts will be vitiated by an inability to maintain favorable local balances of forces".<sup>76</sup> Truly, there is a gradual decrease of U.S. military contingent in Asia with the pull out of the U.S. forces from Clark Air Base and the Subic Naval base in the Philippines in December 1992. Contending countries should now consider this reality and aspire to develop a solution among themselves. Without any cooperative agreements, the states of the region will continue to occupy the offshore islands with a view towards substantiating their territorial claims and enforcing their economic zone claims.

The end of the cold war and the diminishing influence of the United States and Russia in this region is opening a window of opportunity for these contesting countries to chart their own cooperative and security endeavor. The strategic significance of these islands which lies along busy sea line of communication in the South China Seas should propel these claimant countries to have a common cooperative endeavor. The

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<sup>76</sup> John J. Arquilla, Constraint on Regional Deterrence after the Cold War, RAND, August, 1993, p. 7.

Spratlys location in the heart of the South China Sea is also strategic for bases for sea-lane defense, interdiction, surveillance of surface vessels and submarines, and possibly as jumping off board for attacking other countries in Asia. It is high time that an agreement or treaty should be formulated either following the Timor Gap or the Antarctica model that calls for a cooperative regime in developing the vast marine and oil potentials underneath the ocean floor.

China, Vietnam and the Philippines, since 1980s have recognized that advanced technology and expertise, coupled with solid capital, are essential in this kind of venture, where the costs of production and operation are high. Along this line a Spratly Cooperative Authority patterned after the Timor Gap Agreement could be set up to manage the total development of all resources of the Spratly Islands. The authority should not only manage the exploration of oil and marine resources, but should promote cooperation in scientific research as well as the protection of the vulnerable ecosystem. Moreover, to offset the relatively low and stable price of oil in the world market requires modern technological know how and the guarantee of capital and expertise from world renowned oil producing companies. Thus, existing bilateral, regional, and multilateral organizations could help provide some structure or mechanisms for the formulation of cooperative arrangements that would be beneficial to all parties concerned. Unless these nations move quickly and come to

terms, they may find that they have lost not just a solution to this lingering problem in the Spratlys but a chance to take an important step towards economic and security arrangements that would, in the long run, guarantee peace and development of the region well into the next century.

The march toward a cooperative regime is therefore inevitable if these contending countries namely China, Vietnam, Malaysia, Taiwan, Brunei and the Philippines wish to reap the potential underneath the ocean floor of the Spratly Islands. A cooperative regime would open the waters and seabeds around the islands to commercial development and could yield new oil and gas fields as well as develop fishery resources that could benefit all these contending countries. The resources on land and the offshore oil reserves are gradually diminishing and a promising alternative is the untapped marine and oil potential that will help these contending countries keep pace with the evolving economic as well as the emerging world order in the next century. These potentials are so great that the contending countries should reconcile their differences through the recommended cooperative regimes as quickly as possible so that they will not miss the opportunities which will be fostered by realizing these potentials.

#### **ANNEX A: THE ASEAN DECLARATION ( BANGKOK DECLARATION)**

This Declaration gave birth to the Association of South-east Asian Nations (ASEAN). There were five original, or founding, member States: Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei became independent on 1 January 1984, and joined ASEAN on 7 January of that year.

The aims and purposes of ASEAN are, *inter alia*,

1. To accelerate the economic growth, social progress and cultural development in the region....,

2. To promote regional peace and stability....,

3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural technical scientific and administrative fields;

4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative sphere;

5. To collaborate more effectively for the greater utilization of trade, agriculture and industry;

6. To promote Southeast Asian studies;

7. To maintain close and beneficial co-operation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer co-operation among themselves.

## **Annex B : The Antarctic treaty**

### **Article I**

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvre, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purposes.

### **Article II**

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the Treaty.

### **Article III**

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

a. information regarding plans for specific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

b. scientific personnel shall be exchanged in Antarctica between expeditions and stations;

c. Scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

### **Article IV**

1. Nothing contained in the present Treaty shall be interpreted as:

a. a renunciation by any Contracting Party of previously asserted rights or claims to territorial sovereignty in Antarctica;

b. a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica

which it may have whether as a result of its activities of those of its nationals in Antarctica, or otherwise;

c. prejudicing the position of any Contracting Party as regards its recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

#### Article V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

#### Article VI

The provisions of the present Treaty shall apply to the area south of 60 degree South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

#### Article VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this article shall have complete freedom of access at any time or any all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes and personnel in Antarctica, shall be open at all time to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observations may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance of;

a. all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;

b. all stations in Antarctica occupied by its nationals; and

c. any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

#### Article VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to the jurisdiction over all persons in the Antarctica, observers designated under subparagraph 1 (b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

2. Without prejudice to the provisions of Paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1 (e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction of Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

#### Article IX

1. Representatives of Contracting Parties named in the



preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in the furtherance of the principles and objectives of the treaty, including measures regarding:

- a. use of Antarctica for peaceful purposes only;
- b. facilitation of scientific research in Antarctica;
- c. Facilitation of international scientific cooperation in Antarctica;
- d. facilitation of the exercise of the rights of inspection provide in Article VII of the Treaty;
- e. questions relating to the exercise of jurisdiction in Antarctica;
- f. preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participation the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

#### Article X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

## Article XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

## Article XII

1a. The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depository Government has received notice from all such Contracting Parties that they have ratified it.

b. Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depository Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1 (a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2 a. If after the expiration of thirty years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so request by communication addressed to the depository Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

b. Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provide for under Article IX, shall be communicated

by the depository Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

c. If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1 (a) of the Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depository Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depository Government.

#### Article XIII

1. The present treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depository Government.

4. The depository Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present Treaty shall be registered by the depository Government pursuant to the Article 102 of the Charter of the United Nations.

#### Article XIV

The present Treaty, done in the English, French, Russian, and

Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized, have signed the present Treaty.

DONE at Washington this first day of December one thousand nine hundred and fifty-nine.

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